

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Consultant agreement between West Jordan City and Better City, a Utah LLC for economic development activities.

**SUMMARY:** Consider approval of an agreement to engage Better City to assist West Jordan City with economic development recruitment efforts and authorize the Mayor to sign the document. The City Council previously authorized the staff to negotiate a contract with Better City.

**FISCAL  
IMPACT:**

The contract totals \$160,000 which includes a retainer of \$15,000 and \$145,000 for contingent fees. The retainer will be paid upon engagement and will not be counted as part of the contingent fees. The contingent fees would be paid on a performance basis for businesses that are successfully recruited.

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the resolution.

**MOTION RECOMMENDED:**

"I move to approve resolution 14-176 authorizing the mayor to execute the Consulting Agreement between West Jordan City and Better City, a Utah LLC for economic development activities.

Roll Call vote required

**Prepared by:**

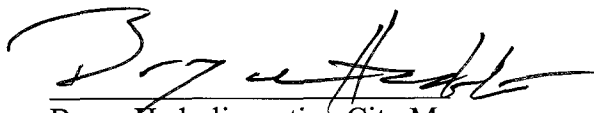
  
David J. Oka

Economic Development Director

**Approved as to form:**

  
Robert Thorup, Deputy Attorney

**Recommended by:**

  
Bryce Haderlie, acting City Manager

## BACKGROUND DISCUSSION:

On July 30, 2014, City Council approved resolution 14-140 selecting Better City for economic development services and authorizing the Mayor to execute a contract between the City and Better City for said services.

Accordingly, staff has negotiated a contract pursuant to resolution 14-140 with the terms as follows:

- 24 month term with (3) one-year extensions by mutual consent
- Better City (the Firm) will recruit businesses on behalf of the City. The City will be involved with the negotiations with any businesses and developers.
- There will be a \$15,000 retainer which will be paid at signing and a \$145,000 contingency fund to be paid to the Firm as they successfully recruit various businesses. The fees will range from \$5,000 to \$40,000 depending on the type of business successfully recruited.
- Contingent payments will be made as follows:  
50% of the fee will be paid when a development agreement is delivered to the City. The City has 60 days to approve or reject the agreement. The balance of the fee will be paid when the developer/tenant/contractor is issued a building permit.
- There is a 90-day termination clause. The fee will be paid for any projects that are in progress at the time of termination of the contract and come to fruition within 6 months after termination.

### Pros and cons

Pros	Cons
<ol style="list-style-type: none"><li>1. Reputable company with a proven track record.</li><li>2. Fee schedule is reasonable.</li><li>3. Risk is shared between the consultant and the City.</li><li>4. This activity complies with a major goal of the City Council.</li><li>5. Most of the money to be paid to the contractor is performance based.</li></ol>	<ol style="list-style-type: none"><li>1. The City takes on some risk after the issuance of building permits to the businesses.</li></ol>

### Comments and Recommendation

With the City Council's emphasis on economic development, and a presently minimal staff, it is prudent to engage a consultant to assist with the recruiting efforts. Staff has negotiated a reasonable contract with Better City and feels that this company will be able to deliver some viable and substantial tenants to West Jordan City. Because of the potential for the economic impact to the City, staff recommends approval of the resolution.

**THE CITY OF WEST JORDAN, UTAH**

A Municipal Corporation

RESOLUTION NO. 14-176

**A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR OF THE  
AGREEMENT BETWEEN THE CITY OF WEST JORDAN AND BETTER CITY, A  
UTAH LLC FOR ECONOMIC DEVELOPMENT ACTIVITIES**

Whereas, on July 30, 2014, the City Council of the City of West Jordan approved resolution #14-140 authorizing the selection of Better City; and, directing staff to prepare a contract with authorization for the Mayor to execute said contract with Better City to provide economic development services.", and

Whereas, pursuant to the directive of the City Council of the City of West Jordan, staff has negotiated an agreement with Better City, and

Whereas, the City Council of the City of West Jordan desires that said agreement be executed by the Mayor; and

Whereas, the Mayor is authorized to execute the agreement.

**NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST  
JORDAN, UTAH, THAT:**

Section 1. The Mayor is hereby authorized and directed to execute the Agreement between West Jordan City and Better City.

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 10th day of September, 2014.

CITY OF WEST JORDAN

By: \_\_\_\_\_  
Mayor Kim V. Rolfe

ATTEST:

\_\_\_\_\_  
Melanie S. Briggs, City Clerk/Recorder

Voting by the City Council

"AYE"

"NAY"

Jeff Haaga

\_\_\_\_\_

\_\_\_\_\_

Judy Hansen

\_\_\_\_\_

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Chris McConnehey

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Chad Nichols

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Ben Southworth

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Justin D. Stoker

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Mayor Kim V. Rolfe

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## CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of August 2014 (the "Effective Date") by and between the City of West Jordan, a governmental entity organized by law as a political subdivision of the State of Utah (hereinafter referred to as the "City") and Better City, a Utah LLC, a (hereinafter referred to as the "Firm").

WHEREAS, the City wishes to engage the Firm to provide the services described herein and the Firm agrees to provide the services for the compensation and otherwise in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, accepted, and agreed to, the City and the Firm, intending to be legally bound, agree to the terms set forth below.

1. **TERM.** Commencing as of the Effective Date, and continuing for a period of twenty four months (the "Term"), unless earlier terminated pursuant to Section 6 hereof, the Firm agrees that it will provide consultant services to the City. The parties, by mutual agreement, may choose to extend the term of the contract for three additional one year terms. Any additional funding for the contract shall be subject to approval by the City.

2. **DUTIES AND SERVICES.** The Firm's duties and responsibilities ("Services") shall be to perform economic development work in West Jordan (the "City") on behalf of the City. This will include, but not be limited to assisting in identifying financing solutions for development and redevelopment projects, work with the City to establish CDA's and RDA's as required to fund project gaps, identify grants, low interest loans and other inducements, and recruit hospitality, corporate headquarter offices, auto dealers, and retail center development/redevelopment. Such work will be identified and prioritized by the City.

(a) The Firm represents and warrants to the City that the Firm is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of the Firm's duties. The Firm represents and warrants that the execution and performance of this Agreement will not violate any policies or procedures of any other person or entity for which the Firm performs Services concurrently with those performed herein.

(b) City will assist the Firm in providing the corresponding information and data gathering that is necessary to perform the scope of Services outlined above and will do so in a timely manner.

### **3. CONSULTING FEE.**

(a) The Firm shall be paid a retainer of fifteen thousand dollars (\$15,000) within 15 days of the execution of this contract. The Firm shall also be paid for the delivery of Services outlined in the attached Scope of Work, which shall be amended from time to time as the Parties agree. Payment for those services shall be made in accordance with paragraph 3(b).

(b) City shall pay to Firm one-half of any payment due as outlined in the attached Scope of Work within 15 days of delivery of a signed development agreement with the remaining balance being paid within 15 days after a building permit for the project has been issued to the tenant/developer or contractor as designated by the developer of the project. . The City Council shall have sixty (60) days, beginning on the date a development agreement is delivered to the City, to accept or reject the development agreement. Failure to vote for approval or rejection of the development agreement by the City Council within the sixty day requirement will trigger payment to Better City for the remaining half of the payment due.

The parties agree that because of the vested interest of the City, the City and the Firm shall be parties to the negotiation of the development agreement. The terms of the agreement shall be mutually agreed-upon by the City and developer.

(c) In addition to the payment described in paragraph “a” of section 3, the Firm reserves the right to negotiate a payment structure that will be generated from the projects that are orchestrated by the Firm on behalf of the City. The City shall maintain the right to review and approve any such payment structures.

(d) The Firm shall be reimbursed for any direct expenditures that are incurred while working on behalf of the City, subject to City approval before these expenditures are made.

(e) The total amount of compensation as described in this agreement shall not exceed one hundred sixty thousand dollars (\$160,000) which includes fifteen thousand dollars (\$15,000) for the retainer and one hundred forty five thousand dollars (\$145,000) for fees as outlined in paragraph (d) and the scope of work attached to this agreement.

(f) The parties agree that the Firm shall submit a letter informing the City of each developer/tenant which the Firm will be presenting to the City to potentially trigger compensation under the Scope of Work. Both parties acknowledge that the City has existing relationships with various developers and tenants. It is agreed that fees will be based on projects that are specific to a location within the city boundaries. It is further agreed that that developers/tenants which are recruited for projects that are subject to a master developer are eligible for payment of fees only if agreeable to the master developer. Any information regarding tenants or developers shall be kept confidential in accordance with section 7 of this agreement.

(g) The Firm agrees that all Services will be rendered by employees of the Firm as independent contractors and that this Agreement does not create an employer-employee relationship between the Consultant and the Firm. The Firm shall have no right to receive any

employee benefits including, but not limited to, health and accident insurance, life insurance, sick leave and/or vacation. The Firm agrees to pay all taxes including self-employment taxes due in respect of the Consulting Fees and to indemnify the City in the event the City is required to pay any such taxes on behalf of the Firm.

**4. AUTHORIZED REPRESENTATIVES.** Each party shall name an individual, specified in Sections 4a and 4b, as its authorized representative for purposes of representation and notices.

(a) The City designates:  
Kim V. Rolfe  
8000 S Redwood Rd.  
West Jordan, UT 84088

(b) The Consultant designates:  
Matthew Godfrey  
1100 Country Hills Drive, Suite 300  
Ogden, UT 84403  
Matthew@bettercity.us

**5. INDEMNIFICATION.** The Firm agrees and covenants to hold harmless and indemnify the City from any claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the Firm, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

The City agrees and covenants to hold harmless and indemnify the Firm from any claims, losses, injury, expenses and attorneys' fees proximately caused by any negligent conduct or omissions that constitute a form of tortious behavior on the part of the City, its officers, employees, or agents in the execution of the work performed in accordance with this Agreement, or which constitutes a breach of this Agreement.

**5. SUCCESSORS.** The Firm and City agree that the provisions of this Agreement shall be binding on heirs, permitted assigns and successors and agents.

**6. TERMINATION.** This Agreement may be terminated by either party upon 90 days notice to the designated representative.

- a) At the time of termination, the Firm will provide to City all work completed or in process as of the date of termination. Within 90 days of termination, City will make payment to the Firm for all authorized fees and expenses outstanding.
- b) If, within 6 months of termination of this agreement, a tenant or developer as described in paragraph 3(f) signs a development agreement with the City, then the Firm shall be paid the fee as outlined in the Scope of Work less the amount of fees as described in paragraph 6(a). If the developer/tenant as described in paragraph 3(f) is issued a building permit,

then the Firm shall be paid the remaining fee as described in paragraph 3(b).

If the agreement is terminated and the Firm has delivered a development agreement as described in the Scope of Work prior to termination of this agreement and a building permit is issued within 6 months after termination of this agreement, then the City shall pay the applicable fee as outlined in the Scope of Work.

**7. CONFIDENTIALITY OF DATA.** The Firm shall treat all data that it receives from or through City, or is otherwise exposed to within the course of completing the scope of work, with the highest degree of confidentiality and in compliance with all applicable federal and state laws and regulations.

The Firm acknowledges that it may be provided or come into contact with confidential information of the City or other related parties (collectively, "City's Confidential Information"). In recognition of the foregoing, the Firm covenants and agrees that

- It will keep and maintain the City's Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure;
- It will use and disclose the City's Confidential Information solely for the purposes for which such information, or access to it, is provided, and Consultant will not use or disclose City's Confidential Information for its own purposes or for the benefit of anyone other than the City or related parties;
- It will not directly or indirectly disclose any of the City's Confidential Information to any third party, except with the City's prior written consent or as otherwise provided herein;
- It will not directly or indirectly use any of the City's Confidential Information to gain an unfair business advantage;
- It shall, upon the earlier of (i) completion of discussions between the parties or any engagement of the Firm by City, (ii) determination that it has no need for the City's Confidential Information, or (iii) at any time the City may so request, dispose of all records, electronic or otherwise (including all backup records and/or other copies thereof) regarding or including any of the City's Confidential Information that Consultant may then possess or control. Disposal shall be achieved through prompt delivery of the records to the City or destruction in a manner that renders the records unreadable and undecipherable by any means. Upon any occurrence of (i), (ii), or (iii) above, the Firm shall, upon request of the City, promptly certify in writing, in a form acceptable to the City and executed by an authorized officer of the Firm, that all of City's Confidential Information has been destroyed or returned.

The City acknowledges that it may be provided or come into contact with confidential information of the Firm or related parties (collectively, "Firm's Confidential Information") including potential businesses and tenants looking to locate or expand in the City. In recognition of the foregoing, the City agrees that receiving parties will sign Non-Disclosure Agreements and provide assurance that it will not circumvent or terminate this Agreement to avoid payment to Better City. Both parties agree that information regarding potential businesses and tenants may be shared with parties outside of this agreement as deemed appropriate by mutual consent in writing, which may be by email.



**8. ENTIRE AGREEMENT.** This Agreement contains the complete agreement and understanding of the parties hereto and supersedes any previous understandings commitments, proposals or agreements whether oral or written and may only be modified or amended in writing or executed by authorized individuals of City and Firm.

**9. JURISDICTION.** This Agreement shall be governed by the laws of the State of Utah.

**10. SIGNATURES.**

EXECUTED as of the Effective Date.

KIM V ROLFE

MATTHEW R GODFREY

By: \_\_\_\_\_  
Mayor, City of West Jordan

\_\_\_\_\_  
President, Better City

Hereunto Duly Authorized

Attest:

\_\_\_\_\_  
City Recorder

## **Scope of Work**

Both parties understand that these projects are strategic in both location and use and are designed to create momentum to catalyze future projects. Although the Firm anticipates securing Letters of Interest (LOI) from tenants/developers within 90 days of the execution of this contract, these projects may have longer lead times to complete, depending on financing complexity and other development factors.

### **Project 1: Hotel & Conference Center**

This project involves crafting a (re)development plan, perform market feasibility studies, develop pro-forma, identify potential sites, identify gap funding sources, secure City support for incentive package, recruit a developer, and negotiate a development agreement for a hotel with conference center. Upon delivering a signed development agreement for a hotel of at least 90 rooms and a conference center of at least 10,000 square feet, the Firm shall be compensated as follows and in accordance with paragraph 3(b):

Payment for Hotel: \$30,000

Payment for Conference Center: \$15,000 + \$1/square foot

In the event Firm attracts other hotel developments in addition to the hotel and conference center above, the Firm shall be compensated \$30,000 per hotel.

### **Project 2: Corporate Headquarters**

This project involves crafting a (re)development plan, perform market feasibility studies, develop pro-formas, identify potential sites, secure City support for incentive packages, recruit a developer(s), and negotiate a development agreement(s) for office uses. Upon delivering a signed public/private partnership agreement with a company to develop corporate office headquarters within City boundaries of at least 30,000 square feet, Firm shall be compensated as follows and in accordance with paragraph 3(b):

Payment per 10,000 square feet of office space: \$5,000

In the event Firm attracts other office users in addition to the corporate headquarters noted above, the Firm shall be compensated \$5,000 per 10,000 square feet.

### **Project 3: Auto Dealership**

This project involves acting in an advisory capacity to the City in addressing issues at the State legislature that will provide auto dealerships with greater flexibility to locate in the City. In addition, to the extent allowable under State law for the expansion or relocation of dealerships to the City, the Firm will recruit new and used car dealerships, secure incentive packages from the City and negotiate development agreements, with a focus on establishing an auto mall area. Firm and City will identify and agree on those reputable and experienced used car dealership that will be good candidates to locate in the City.

Upon delivering a signed development agreement(s) for a car dealership within City boundaries,

Firm shall be compensated as follows and in accordance with paragraph 3(b):

Payment per new auto dealership: \$ 40,000

Payment per used auto dealership: \$ 20,000

**Project 5: Retail/Entertainment**

This project involves working with the City and the RDA in identifying opportunities for green-field development, infill, and redevelopment. The Firm will work with the City to develop vision, goals, and objectives for each location and recruit tenants and developers. Upon delivering a signed development/redevelopment agreement for retail space, the Firm shall be compensated as follows and in accordance with paragraph 3(b):

Payment: \$0.50 per square foot of retail space.